Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. (M/S) No. 3563 of 2001
Old CMWP No. 39984 of 1998

Shri Gurmeet Singh, S/O Shri Purushottam Singh,
Resident of 47, Hardwar Road, Rishikesh,
Dehradun. …. Petitioner

Versus

1. The Rent Control and Eviction Officer, Rishikesh, Dehradun.
2. Shri Sanjeev Sharma, S/O Shri Surresh Chand Sharma, 47, Hardwar Road, Rishikesh, Dehradun.
3. Shri Savender Singh Son of Shri not known, Resident of 47, Hardwar Road, Rishikesh, Dehradun.

….. Respondents.

Sri V.K. Kohli, Senior Adv. assisted by Sri I.P. Kohli, learned counsel for the petitioner.
Sri Nand Prasad, Learned Standing Counsel for the respondent-State.

Date: June 20, 2006.

(Hon'ble B.S. Verma, J.)

The petitioner has filed this writ petition for a writ or order or direction in the nature of certiorari quashing the order of the respondent No.1 dated 1-9-1998 declaring the vacancy as well as allotting the premises in dispute in favour of respondent no.2 (Annexure No. 4.)

Relevant facts of the case as borne out from the record are that the petitioner-landlord moved an application before the Rent Control and Eviction Officer Dehradun under Section 15 of the U.P. Act No. XIII of 1972 informing him of the vacancy of one room on the ground floor of the building being used as a shop, which has arisen due to vacation of the said shop by Purushottam Singh on 30-5-1996 alleging that the tenant of the shop had died on 30-5-1996. On this application, the R.C. & E.O. made

an endorsement dated 29-6-1998 ordering the Rent Control Inspector to submit his report in three days. Earlier On 29-6-1998, the landlord-petitioner nominated one Sanjeev Kumar Sharma as tenant of his choice. The Rent Control Inspector submitted his report to the effect that he contacted the landlord on 28-8-1998, who told him that the disputed room was let out the Purushottam Singh on the monthly rental of Rs. 125/- and the tenant had died on 30-5-1996. It was also mentioned that the landlord proposed Sanjeev Kumar Sharma as tenant of his choice. On the basis of vacancy informed by the landlord Rent Control Case No. 3 of 1998 Sarvendra Singh Vs. Sanjeev Kumar Sharma was registered and the R.C. and E.O. passed an order on 31.6.1998 that the case be put up on 1-9-1998 along with the inquiry report of the Rent Control Inspector and the information given by the landlord. On 1-9-1998, the learned R.C. & E.O. passed the allotment order by observing that the allotment in favour of the nominee having been not passed within a period of 21 days from the date of intimation of vacancy by the landlord, hence the impugned order dated 1-9-1998 was passed, thereby allotment order was passed in favour of the respondent no.2.

From the record it also emerges out that aggrieved by the order dated 1-9-1998, the tenant-petitioner went up in revision before the District Judge Dehradun, which was registered as Rent Control Revision No. 148 of 1998, Gurmeet Singh and others Vs. Savender Singh and others arising out of the impugned order, which has been challenged here in this writ petition. On 16-9-1998, the revision was admitted before the District Judge Dehradun and the operation of the impugned order dated 1.9.1998 was stayed.

It is pertinent to mention that the petitioner himself has annexed copy of stay order dated 16-9-1998 passed by the District Judge Dehradun passed in Rent Control Revision No.

148 of 1998, Gurmeet Singh & others Vs. Savender Singh and others, arising out of Case No. 3 of 1998 Shri Savender Singh Vs. Sanjeev Sharma decided on 1-9-1998, which is Annexure 5A to the writ petition. The order dated 16-9-1998 of the revisional court reads as under:-

> "***Heard. Admit. Register.***
> ***Issue notice fixing 11.11.1998 for disposal.***
> ***Meanwhile the operation of the impugned order under revision is hereby stayed.***
>
> ***Sd/- K.P.Malik,***
> ***District Judge, Dehradun."***

In view of the stay order dated 16-9-1998 passed by the District Judge Dehradun before whom the revision preferred by the petitioner arising from the same judgment and order of the R.C. & E.O., there is no order in the eye of law as on today. In this view of the matter, there is no question of setting aside the impugned order by this Court. In the circumstances of the case, there appears no need to decide the present writ petition on merit. However, to meet the ends of justice the District Judge Dehradun may be directed to decide the revision petition on merits expeditiously.

The writ petition is hereby dismissed on the ground that the petitioner had already availed the alternate remedy. No order as to costs. However, the District Judge Dehradun is directed to decide the Rent Control Revision No. 148 of 1998, Gurmeet Singh and others Vs Savender Singh and others expeditiously, preferably within a period of six months from the date of production of certified copy of this order without being influenced by the order of this Court. The question of declaring vacancy shall also be considered by the Revisional Court while deciding the revision. Both the parties shall co-operate in the expeditious disposal of the revision before the District Judge. Till the decision of the case, the revisionist shall not be evicted.

(B.S. Verma, J.)

RCP